

**IN THE SUPREME COURT OF MISSOURI**

**APPELLATE CASE NO. WD76927**

**SUPREME COURT NO. SC94372**

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ANGELA ANDERSON

Appellant

vs.

UNION ELECTRIC COMPANY

Respondent.

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On Appeal from the Circuit Court of Morgan County

Case No. 13MG-CC00034

Honorable Kenneth Michael Hayden, Judge

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**APPELLANT'S SUBSTITUTE REPLY BRIEF**

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## ARGUMENT

### I. RESPONDENT’S ARGUMENT FAILS TO ADDRESS THE COMMERCIAL PURPOSE OF THE DOCK FEE ASSESSED.

If the Lake of the Ozarks generally, and the area adjacent to the Anderson dock specifically, is an area primarily utilized by the Respondent for commercial purposes, then the area where the children were fatally injured is non-covered land and the Respondent is not entitled to immunity under the RUA. Respondent makes no plausible argument that the dock and its adjacent waters were not used primarily for commercial purpose.

*StopAquila.org v. City of Peculiar*, 208 S.W.3d 895 (Mo.2006) is informative. In that case, the issue concerned whether a utility plant established to generate electricity could be construed as a “...manufacturing, commercial, warehousing or industrial development purpose” within the meaning of Article IV, section 27(b) of the Missouri Constitution. *Peculiar* held that the generation of electricity was a commercial purpose. It is not disputed the entire Lake of the Ozarks is, most primordially, a hydroelectric plant. In *Peculiar* the utility argued that the generation of electricity should be regarded as a commercial purpose. This Court agreed, holding the generation of electricity to be a project for commercial purposes. Applying that logic to this case, the entirety of the Lake is logically non-covered land as its primary purpose is to generate electricity. To hold otherwise would create an inconsistency in the law without purpose other than to inure to the whimsical benefit of utilities.

However, the suggestion of Mrs. Anderson in the instant case is more tailored; Union Electric has chosen to charge the Anderson family a use fee for the placement, use and enjoyment of their dock. The fee was paid. The children were killed as a consequence of electricity flowing from the dock from which Union Electric willfully derived a profit. The exchange of monies between the Andersons and Union Electric is a commercial transaction. *Id* at 902 [footnote12].

The bounds of its responsibility for the dock from which it derives income is a delimited function of physics and nature in this matter. The effects of current dissipate as one moves away from the source of current. Basic physics instructs that electricity dissipates in a spherical fashion as one moves away from the source of the current.

### **CONCLUSION**

Because the trial court erred in dismissing the Appellant's Petition for failure to state a claim, Appellant respectfully requests the opinion of the Western District be affirmed and the judgment of the trial court be reversed.

Respectfully submitted,

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	)	
Appellant,	)	Civil Case No. 13MG-CC00034
	)	
vs.	)	Appellate Case No. WD76927
	)	
UNION ELECTRIC COMPANY	)	Supreme Court No. SC94372
	)	
Respondent.	)	

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**APPELLANT'S CERTIFICATE OF COMPLIANCE**

COMES NOW Appellant, Angela Anderson, by and through her attorneys of record, and certifies that Appellant's Substitute Reply Brief complies with the limitations contained in Rules 84.06(b) and 55.03. Appellant's Substitute Reply Brief contains 459 words and 59 lines. Counsel for Appellant relied upon the word and line count of his word processing system in making this certification.

Respectfully submitted,

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	)	
<b>UNION ELECTRIC COMPANY</b>	)	<b>Supreme Court No. SC94372</b>
	)	
<b>Respondent.</b>	)	

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**APPELLANT’S CERTIFICATE OF SERVICE**

Counsel for Appellant certifies that Appellant’s Substitute Reply Brief was served in the following manner pursuant to Rule 84.05(a) and to the following parties on January 22, 2015:

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